

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
GRIMMOND BASCOM,

Plaintiffs,

-against-

THE CITY OF NEW YORK, POLICE OFFICERS JOHN
DOES 1-6,

Defendants.
----- X

ANSWER

08-cv-00169 (LAP)(AJP)

JURY TRIAL DEMANDED

Defendant City of New York, by its attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows.

1. Denies the allegations set forth in paragraph “1” of the complaint, except admits that plaintiff purports to proceed as stated therein.

2. Denies the allegations set forth in paragraph “2” of the complaint, except admits that plaintiff purports to bring this action and invoke the jurisdiction of the Court as stated therein.

3. Denies the allegations set forth in paragraph “3” of the complaint, except admits that plaintiff purports to invoke supplemental jurisdiction of the Court and base venue as stated therein and admits that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on or about October 25, 2006 and the claim has not been adjusted or paid.

4. Denies the allegations set forth in paragraph “4” of the complaint, except admits that plaintiff purports to base venue as stated therein.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the complaint.

6. Admits the allegations in paragraph “6” of the complaint.

7. Denies the allegations set forth in paragraph “7” of the complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the complaint.

9. Denies the allegations set forth in paragraph “9” of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the complaint.

12. Denies the allegations set forth in paragraph “12” of the complaint.

13. Denies the allegations set forth in paragraph “13” of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Denies the allegations set forth in paragraph “18” of the complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the complaint, except admits that the Criminal Court of the City of New York indicated that the arrest of plaintiff was “undocketed.”

20. Denies the allegations set forth in paragraph “20” of the complaint.

21. In response to the allegations set forth in paragraph “21” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “20” of this answer as if fully set forth herein.

22. Denies the allegations set forth in paragraph “22” of the complaint

23. In response to the allegations set forth in paragraph “23” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “22” of this answer as if fully set forth herein.

24. Denies the allegations set forth in paragraph “24” of the complaint.

25. Denies the allegations set forth in paragraph “25” of the complaint.

26. Denies the allegations set forth in paragraph “26” of the complaint.

27. In response to the allegations set forth in paragraph “27” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “26” of this answer as if fully set forth herein.

28. Denies the allegations set forth in paragraph “28” of the complaint.

29. In response to the allegations set forth in paragraph “29” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “28” of this answer as if fully set forth herein.

30. Denies the allegations set forth in paragraph “30” of the complaint.

31. Denies the allegations set forth in paragraph “31” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

32. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

33. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

34. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

35. Plaintiff provoked any incident.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

36. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

37. Plaintiff may have failed to comply with the conditions precedent to suit.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

38. Punitive damages cannot be assessed against the City of New York.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

39. There was probable cause for plaintiff's arrest, detention and prosecution.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE:

40. There was reasonable suspicion and/or probable cause for any search.

WHEREFORE, defendant requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 25, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007
(212) 676-1347

By: /s/
 Brooke Birnbaum (BB 8338)
 Assistant Corporation Counsel
 Special Federal Litigation Division

To: Mr. Richard Cardinale, Esq. (via ECF)

Index No. 08-cv-00169 (LAP)(AJP)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
<p>GRIMMOND BASCOM,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">-against-</p> <p>THE CITY OF NEW YORK, POLICE OFFICERS JOHN DOES 1-6,</p> <p style="text-align: right;">Defendants.</p>
ANSWER
<p style="text-align: center;">MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendants</i> <i>100 Church Street</i> <i>New York, New York 10007</i></p> <p style="text-align: center;"><i>Of Counsel: Brooke Birnbaum</i> <i>Tel: (212) 676-1347</i> <i>NYCLIS No.</i></p>
<p><i>Due and timely service is hereby admitted.</i></p> <p><i>New York, N.Y. , 200..</i></p> <p><i>..... Esq.</i></p> <p><i>Attorney for</i></p>